

*to my office at DTZ and the name of DTZ was listed on all such correspondences."*

### **Part III - Mechanism for dealing with conflict of interests and Mr LEUNG Chun-ying's declarations**

2.29 As mentioned in paragraph 2.10 above, a company of which a member of the Jury was a director or major shareholder was ineligible to enter the Competition. The Competition Document did not provide for any mechanism for declaring interest or dealing with conflict of interests by members of the Technical Panel and the Jury. Mr Eric JOHNSON also told the Select Committee that the completion of declaration of interest forms by members of the Jury or the Technical Panel had not been a requirement in the Competition Document. It had been imposed separately as a supplementary requirement by the Organiser after the launch of the Competition. This part provides an account of the process of the Organiser's formulation of the mechanism for dealing with conflict of interests and sets out Mr LEUNG Chun-ying's declaration.

#### Formulation of the mechanism for dealing with conflict of interests

2.30 According to Mr Gordon SIU and Mr PO Pui-leong, the mechanism for dealing with conflict of interests was formulated after they left PLB in July 2001 and August 2001 respectively. Mr SIU advised that the basis for not formulating such mechanism earlier was the lack of general practice in relation to declaration of interest in international

competitions according to the Professional Advisor. Different competitions had adopted different arrangements. The Administration then considered that the formulation of such mechanism needed more research, and therefore decided to launch the Competition first and then follow up on the matter. According to Mr PO, the Competition Document was mainly provided for participants' reference, while declaration of interest was a matter for the Jury and the matter could be followed up after the launch of the Competition.

2.31 The formulation of the mechanism for dealing with conflict of interests was left to Mr PO Pui-leong's successor, Mr Eric JOHNSON. Mr JOHNSON told the Select Committee that when he took over the duty as Competition Co-ordinator, the Competition was well underway. The Jury and the Professional Advisor had already been appointed. The Competition Document establishing the rules and conduct of the Competition, including the membership of the Jury and the Technical Panel, had been issued. Registration of interest in entering the Competition had been received and the Organiser was awaiting receipt of entries. His immediate tasks were to devise procedures for the secure and proper handling of entries and for declaration of interest in consultation with the Professional Advisor and the Chairman of the Jury. The objective was to ensure that arrangements were in place for fair and efficient handling and adjudication of the entries.

2.32 The Select Committee notes that the Organiser initially considered applying the declaration arrangements to members of the Technical Panel first. At the first meeting of the Technical Panel on

9 October 2001, under the agenda item on "*declarations of interest*", Mr Eric JOHNSON informed members that PLB was looking into whether the provisions concerning ineligibility, anonymity and confidentiality in the General Conditions of the Competition Document should be supplemented with declarations of interest by members of the Technical Panel and had sought the advice of the Professional Advisor on the approach to be adopted. The Chairman of the Technical Panel reminded members to be aware of the competition rules on ineligibility and conflict of interests, notwithstanding that the onus of compliance was in most cases on the participants and that the Organiser was responsible for verifying ineligibility. After some discussion, members agreed that the best way forward might be a general declaration of no conflict of interests even though a declaration of interest was not required.

*Consultation with Independent Commission Against Corruption ("ICAC")*

2.33 On 18 October 2001, Mr Eric JOHNSON sent a memorandum attaching a draft declaration form in **Appendix 2(i)** to the Commissioner of ICAC seeking his views on the question of declaration of interest by members of the Technical Panel. The draft declaration form provided four items for declarants' selection, as reproduced below:

*"\*(a) to the best of my knowledge, none of my immediate family members or employees and no-one who has an employment-type contract or close professional association or partnership with me, has entered the competition;*

*\*(b) I believe that the following, among my immediate family members or employees and those who have an employment-type contract or close professional association or partnership with me, have entered the competition;*

Name of entrant	Relationship with entrant

*\*(c) no company of which I am a director or major shareholder has entered the competition;*

*\*(d) a company of which I am a director or major shareholder has entered the competition. The company's name is:*

*(\*delete as appropriate)"*

2.34 Mr Eric JOHNSON stated in his memorandum of 18 October 2001 that the Organiser was considering whether to require members of the Technical Panel to declare whether they were aware that any of their immediate family members, employees or close professional associates, or any company of which they were a director or major shareholder, had entered the Competition and, if so, the names of those concerned. The Organiser would be able to check any declared names against the information in the sealed envelopes submitted with the entries

and report the outcome to the Chairman of the Technical Panel for a ruling.

2.35 In the reply dated 6 November 2001 to Mr Eric JOHNSON in **Appendix 2(j)**, the Director of Corruption Prevention of ICAC advised that all persons closely associated with the Competition should be asked to declare conflict of interests to the best of their knowledge. The declaration requirement should apply not only to the Technical Panel but also the Jury and the Professional Advisor. To facilitate declaration and to check eligibility, they had to be informed of the identities of the entrants. ICAC recommended that entrants' consent be sought to waive the confidentiality and anonymity restrictions of the Competition Document. ICAC also suggested that "*if the declaration is made without disclosure of the entrants' identities, the revelation of their identities (for vetting of eligibility purpose) should be the last step before announcement of the winners. Alternatively, the declaration should be made based on the sight of a list of entrants but with anonymity of the proposals maintained*".

2.36 On 23 November 2001, Mr Eric JOHNSON sent a memorandum in **Appendix 2(k)** to ICAC attaching the finalised version of the declaration form and stating that the Organiser "*shall extend the proposed declaration arrangements to the Jury and the Professional Advisor in addition to the Technical Panel*". Mr JOHNSON also stated in the memorandum that the Organiser preferred to proceed initially on the basis of a declaration to the best of the declarants' knowledge. Accordingly, the Organiser considered it unnecessary to ask entrants for

consent to waive the confidentiality provisions so that declarations could be made with knowledge of the entrants' identities. The Competition Team would however consider ICAC's suggestion that there should be a further opportunity (for all those who had completed the initial "best of my knowledge" declaration) to declare any conflict of interests in the light of the identities of the winning entries before they were announced. The Organiser considered that this would help to safeguard the integrity of the Competition.

2.37 The Select Committee notes that compared to the draft declaration form attached to Mr Eric JOHNSON's memorandum dated 18 October 2001 to ICAC (Appendix 2(i)), the finalised version of the declaration form attached to his memorandum dated 23 November 2001 to ICAC (Appendix 2(k)) provided not only the four items in paragraph 2.33 above but also an additional option for declarants to choose, i.e. new item (c) was inserted and former items (c) and (d) became items (d) and (e), as reproduced below :

*"\*(a) to the best of my knowledge, none of my immediate family members or employees and no-one who has an employment-type contract or close professional association or partnership with me, has entered the competition;*

*\*(b) I believe that the following, among my immediate family members or employees and those who have an employment-type contract or close professional*

*association or partnership with me, have entered the competition;*

Name of entrant	Relationship with entrant

*#(c) I am not a director or major shareholder of any company;*

*#(d) no company of which I am a director or major shareholder has entered the competition;*

*#(e) a company of which I am a director or major shareholder has entered the competition. The company's name is:*

*\*delete (a) or (b); if you delete (a), complete (b)*

*#delete/complete as appropriate; whichever one applies, delete the other two"*

### Declarations by members of the Technical Panel

2.38 On 24 November 2001, the Competition Team wrote to members of the Technical Panel attaching the declaration form (**Appendix 2(1)**) and requesting them to make declaration of interest as soon as possible. The Competition Team received all the declaration

forms dated from 27 November 2001 to 10 December 2001 completed by the Chairman and members of the Technical Panel as well as the Professional Advisor. Mr Eric JOHNSON told the Select Committee that members of the Technical Panel had not experienced any particular problems in completing the declaration form.

2.39 At its meeting on 11 December 2001, the Technical Panel discussed the declarations made by members. Members noted that a member, Professor Alex LUI Chun-wan, had declared that one company for which he had occasionally provided consultancy service had participated in the Competition but he himself had not participated in the entrant's project and did not know which of the submissions was from that company. Members were satisfied that on the basis of the declarations, no conflict of interests arose for any member. A table summarising the declarations made by members of the Technical Panel in the declaration forms is in **Appendix 2(m)**.

*Mr David LEE's declarations*

2.40 The Select Committee notes that at the meeting of the Technical Panel on 9 October 2001, Mr David LEE, a member of the Technical Panel, informed members that in order to avoid inadvertent conflict of interests, he had informed his staff by circular that he had been appointed as a member of the Technical Panel and reminded them that as employees of his firm, they were ineligible to participate in the Competition. In this connection, Mr LEE attached to his declaration form dated 4 December 2001 a copy of two internal circulars issued by him on

12 June 2001 to the staff of his two firms, namely David C Lee Surveyors Limited and JADL Design Limited, on the subject of conflict of interests. A copy of Mr LEE's declaration form and internal circulars are in **Appendix 2(n)**. In the internal circulars, Mr LEE reproduced the ineligibility provision in paragraph 16 of the General Conditions of the Competition Document for his staff's reference. He hoped that his staff would "*refrain from entering the Competition in any way or form*", and stated that if he was aware of anyone of his staff taking part in the Competition, he would be duty bound to disclose the entry concerned and it would probably be disqualified.

2.41 Mr Eric JOHNSON told the Select Committee that Mr David LEE was the only person who attached to his declaration form internal circulars of that nature. Mr JOHNSON stated that it had been up to members of the Technical Panel to supplement their declarations. The Organiser had not sought any additional supplementation from them. In his view, the declaration form itself had provided sufficient declaration material to comply with paragraph 16 of the General Conditions of the Competition Document, which was reproduced in the first part of the form.

#### Declaration arrangements for the Jury

2.42 On 11 February 2002, in the light of the experience of the Technical Panel, Mr Eric JOHNSON asked Lord ROTHSCHILD, Chairman of the Jury, for approval to apply similar declaration

arrangements to the Jury. Lord ROTHSCHILD gave his approval on 12 February 2002. Mr JOHNSON informed the Select Committee that :

*"Basically, when I took over the job, I thought no work had been done up to that point on the question of declaration of interest. Possibly because it was not an item mentioned in the Competition Document, and therefore had not attracted my predecessor's attention very much up to that point. But I recognized immediately that something had to be done. And I spent an inordinate amount of time, in fact, on developing the process for the conflict of interest exercise, developing the form for the declaration and consulting the Professional Advisor, consulting the ICAC, and all of this did take us into February. It was not until all that work had been done that we were in a position to issue the forms to the members of the Jury."*

*"...it was not a sort of 'quick quick' process, it was something which had to be thought through. ... I think we did it pretty expeditiously. I do not think that it was unduly late. But we had to do it before the Technical Panel started convening. And we did that. It was not late for that. Then we applied it to the Jury in reasonable time. So I do not think that we were dilatory in any way in producing these forms or in dealing with the subject generally of the declaration of interests."*

*Declaration form and requirements*

2.43 On 21 February 2002, Mr Eric JOHNSON faxed a letter to members of the Jury informing them of the programme for the Jury from 21 February to 2 March 2002, including the viewing sessions of the entry presentation boards on 24 and 25 February 2002. The letter enclosed the declaration form in **Appendix 2(o)** in which the five items provided for the declarant to choose were identical to those listed in paragraph 2.37 above. In the letter, Mr JOHNSON requested members of the Jury to return the completed forms to him by fax by Saturday, 23 February 2002, so that the completed declarations would be reviewed initially by the Organiser and Lord ROTHSCHILD on 24 February 2002 and be discussed at the first Jury meeting on 25 February 2002. Under the section on "*Conflict of interest declarations*" in his letter, Mr JOHNSON quoted the advice of the Professional Advisor that "...*all Jurors and Technical Panel members are expected to sign a binding agreement of confidentiality and conflict of interest notification...*", and asked members of the Jury to note the following points before completing the declaration form in Appendix 2(o) :

- "(i) *paragraph 16 of the General Conditions in the Competition Document provides among other things that the members of the Jury, their immediate family members, their employees, their close professional associates and any company of which they are a director or major shareholder are ineligible to enter the competition;*

- (ii) *as regards immediate family members, employees and close professional associates, the onus is on the prospective participant to check whether he has such a relationship with any member of the Jury, so that he does not enter the competition when ineligible. Hence it is sufficient in the declaration form for the juror to declare to the best of his knowledge (in item (a)) or belief (in item (b));*
- (iii) *it is not incumbent upon jurors to make enquiries of any close associate or contact to ascertain whether or not they have entered the competition;*
- (iv) *where item (b) applies, perhaps because the juror has been told by someone that he has entered the competition, this will not necessarily be a problem, as the likelihood is that no conflict of interest will arise if the juror has not participated in the entrant's project and does not know which of the entries is from that entrant;*
- (v) *as regards directorships and majority shareholdings, the juror is assumed to be aware of the activities of his companies, if any, and the onus is therefore on him to ensure that none enters the competition. Hence the declaration here - with a choice between items (c), (d)*

*and (e) in the form - assumes full knowledge on the part of the declarant; and*

*(vi) the completed declarations will be reviewed initially by the organizer and Lord ROTHSCHILD on 24 February and be discussed at the first Jury meeting on 25 February. It is therefore essential that you return the completed form to me by 23 February."*

Mr JOHNSON's explanation of the five items in the declaration form is in **Appendix 2(p)**.

*Deadline for submission of declarations*

2.44 Given that Lord ROTHSCHILD had given clearance to proceed with the declaration arrangements for the Jury on 12 February 2002, the Select Committee asked Mr Eric JOHNSON why members of the Jury were given only two days to complete and return the declaration forms. Mr JOHNSON stated that he could not recall why members of the Jury had not been given as much time as members of the Technical Panel to complete and return the declaration forms. He recalled that he had sent out all the declaration forms to members of the Jury at the same time and that was probably because he had been awaiting the arrival of the overseas members of the Jury on about 21 February 2002. He remembered giving the declaration forms to overseas members of the Jury with his letter of 21 February 2002 more or less as soon as they stepped off the plane. He was not sure whether any member of the Jury

had received the declaration form earlier but it would only have been the local members. Mr JOHNSON told the Select Committee at its hearing on 17 March 2012 that :

*"I felt by that time it was a very simple form to complete actually, and it did not require or should not have required a lot of research on the part of the declarant...Anybody who was in pretty good contact with his family members, employees and close business associates, or if he was running a business, anybody who knew what was actually going on in his businesses or was in control of the situation, could complete the form easily and quickly".*

He also told the Select Committee that members of the Jury had quite enough time to complete the declaration forms and nobody had complained to him that they had not had enough time to do so. As far as he could recall, no members of the Jury had sought further advice from him on how to interpret or complete the declaration form.

2.45 As regards the receipt of Mr LEUNG Chun-ying's declaration form, Mr Eric JOHNSON told the Select Committee that it was up to Mr LEUNG Chun-ying to decide whether he should fax the completed declaration form to him on 23 or 24 February 2002 or bring it back to him during the viewing session on 24 February 2002. Many members of the Jury who had not given him the completed declaration forms by the 23 February 2002 deadline actually handed the forms to him

during the viewing session. Mr LEUNG Chun-ying chose to hand the form to him at the Jury meeting of 25 February 2002.

2.46 Before the Sunday afternoon of 24 February 2002, Mr Eric JOHNSON received eight completed declaration forms from members of the Jury, with six of them dated 23 February 2002 or earlier and two of them (from Mr Nicholas BROOKE and Prof CHANG Hsin-kang) dated 24 February 2002. In that afternoon, Mr JOHNSON had an initial review of the eight declaration forms received with Lord ROTHSCHILD and the Professional Advisor, and they considered that such declarations appeared to pose no problem. The declaration forms from Mr LEUNG Chun-ying and Prof Patrick LAU had yet to be received at the time.

#### Declaration made by Mr LEUNG Chun-ying

2.47 At the first Jury meeting held in the morning of 25 February 2002, Mr Eric JOHNSON received the two outstanding declaration forms, both of which dated 25 February 2002, from Mr LEUNG Chun-ying and Prof Patrick LAU in **Appendices 2(q)** and **2(r)** respectively. Prof LAU told the Select Committee that he could not recall why he had submitted the declaration form after the specified deadline and this might have been caused by the short time given. The Select Committee notes that there was an agenda item on "*Conflict of interest declarations*" for the Jury meeting of that day. Mr JOHNSON stated that the purpose of the agenda item was to chase members of the Jury who had missed the deadline of 23 February 2002 for return of declaration forms and to provide a second opportunity – the first opportunity having been on 24 February – for

consideration by the Chairman of the Jury of any potential conflict of interests declared in any of the completed declaration forms.

2.48 In the declaration form submitted by Mr LEUNG Chun-ying in Appendix 2(q), he deleted items (b), (d) and (e) and chose the following two items :

*"(a) to the best of my knowledge, none of my immediate family members or employees and no-one who has an employment-type contract or close professional association or partnership with me, has entered the competition"; and*

*"(c) I am not a director or major shareholder of any company".*

*Mr LEUNG Chun-ying's understanding of the declaration requirements*

2.49 Mr LEUNG Chun-ying told the Select Committee that at the time of making his declaration, he believed that he was required to make a "*declaration of conflict of interests*" and not a "*declaration of interest*". Mr LEUNG Chun-ying's response at the hearing on 20 March 2012 was as follows (English translation) :

*"...I do hope that we can clearly distinguish the difference between the two types of declaration requirements. One is about declaration of interests ... the other one is about*

*declaration of conflicts of interests. Up to now, I still hold the view that the form concerned required me to make a conflict of interest declaration. I believe that, among all members of the Technical Panel and members of the Jury, I was not the only one who had such an understanding. After that, Mr Eric JOHNSON had not asked me to fill in another form."*

*"It was stated clearly in the form that it was about conflict of interests, rather than interests ... These two concepts have all along been there. My understanding was that the declaration on this occasion was not a general declaration of interests, but a declaration of conflict of interests. Therefore, you can see that in both the guidance notes on the completion of the declaration form and the declaration form itself, the word 'conflict' had appeared on a number of occasions."*

Mr LEUNG Chun-ying's understanding was that the sub-heading on page 3 of Mr Eric JOHNSON's letter dated 21 February 2002 (Appendix 2(o)) was "*Conflict of interest declarations*". The passage on the Professional Advisor's advice reproduced in italics in the letter also mentioned "*conflict of interest notification*". It would therefore be reasonable for him to believe that "*he was required to declare whether or not he would have a conflict of interest acting as a juror in the Competition, not whether or not he was a director or shareholder in any company*". Mr

LEUNG Chun-ying's written evidence on his understanding of the declaration form and requirements is reproduced in **Appendix 2(s)**.

2.50 Mr LEUNG Chun-ying informed the Select Committee that he filled in the form by himself and did not seek advice or assistance from any other person. Mr LEUNG Chun-ying's response at the hearing on 21 April 2012 was as follows (English translation) :

- (a) *"I completed it ... er ... by myself because I recognized my own handwriting, and there was not much to fill in that required the assistance of others. As I said at the previous hearing, I had conducted the conflict search by checking "the Book"."*
- (b) In reply to the question raised by a member *"Please confirm once again that in the course of filling in the form, you had not asked anybody or any third party as to how to interpret the contents of the form."*, Mr LEUNG Chun-ying stated that *"No. I had not."*

Mr LEUNG Chun-ying informed the Select Committee that before completing the declaration form, he had conducted a conflict of interest check by calling a staff member of the DTZ office at Quarry Bay in Hong Kong ("the Staff Member Concerned") between 21 and 23 February 2002 to check whether DTZ had recently done or was in the course of doing any jobs in relation to WKR. The Staff Member Concerned called back later to confirm that there had been no such record in the Confirmed

Instruction Registry (which was called by DTZ as "the Book" ) indicating that DTZ had been retained and/or was in the process of carrying out work for retained clients in relation to WKR. The Select Committee requested Mr LEUNG Chun-ying to find out who the Staff Member Concerned was, but he responded that he could not recall the identity of and locate the Staff Member Concerned (please refer to paragraphs 3.41 to 3.54 of Chapter 3 for details).

2.51 The Select Committee notes that Prof Patrick LAU, a member of the Jury, and Prof CHOW Che-king, a member of the Technical Panel, had been a director or major shareholder of companies but had also chosen items (a) and (c) in their declaration forms. Prof LAU told the Select Committee that he had so declared because according to his understanding at the time, while he was a director and shareholder of Meritor Investment Limited, the company was only a property holding investment company without any actual business operation. There would not be any conflict of interests arising from his participation in the adjudication process of the Competition. He had therefore considered it unnecessary to make any declaration.

2.52 Mr Eric JOHNSON recalled that at the Jury meeting in the morning of 25 February 2002, he only had time for a quick look at the declaration forms from Mr LEUNG Chun-ying and Prof Patrick LAU, and his focus then was whether any company's name had been entered in items (b) and (e) of the forms because any company's name being entered in item (b) or (e) was of utmost importance to the Jury, as this could signal a potential conflict of interests. Mr JOHNSON told the Select

Committee that Mr LEUNG Chun-ying's declaration that he was not a director or major shareholder of any company "*was not of really immediate importance for the Jury*". As with the other eight declarations, no company's name was entered in item (b) or (e) in the declarations of Mr LEUNG Chun-ying and Prof LAU. He therefore reported to the Chairman of the Jury that "*everything appeared to be in order*" as regards potential conflict of interests. A table summarising the declarations made by members of the Jury in the declaration forms is in **Appendix 2(t)**.

2.53 The Select Committee notes that different views had been expressed by the local members of the Jury on the design of the declaration form. Prof Patrick LAU told the Select Committee that he had not been subject to such declaration requirements in his jury experiences in similar competitions. He considered the form "*rather difficult to understand*" and he filled in the form based on his understanding that members of the Jury should not have any relationship with the participants in the Competition. The Select Committee also notes that Mr Nicholas BROOKE, another member of the Jury whose company was similar in nature to that of Mr LEUNG Chun-ying, had made enquiries of the central file registry of the Accounts Department of his company to confirm whether jobs relating to WKR had been received before filling in his declaration form. According to Mr BROOKE, when he started to fill in the declaration form, he was "*somewhat confused*" by item (c) ("I am not a director or major shareholder of any company."), as "*it did not seem to relate specifically to the Competition*", whereas item (d) ("no company of which I am a director or major shareholder has entered the competition") was "*a very clear declaration*" and "*related to the*

*Competition*". Upon careful reading and understanding of the other items mentioned in the form, he finally deleted item (c) and chose item (d), which in his view, accurately stated his situation. Prof CHANG Hsin-kang told the Select Committee that he had no difficulty in completing the form, as he and his family members had never participated in similar competitions or architectural or property businesses. In the view of Mrs Selina CHOW, the declaration requirements had been clearly spelt out in the declaration form. Members of the Jury were requested to declare interest with the objective to avoid conflict of interests. It was not difficult for her to complete and return the form within the given timeframe. The Select Committee notes that all five of the overseas members of the Jury completed and returned the declaration forms by the deadline set.

#### **Part IV - Mr LEUNG Chun-ying's participation as a member of the Jury in the adjudication process**

2.54 According to the proposed programme for the week of the Jury meeting in late February 2002 (Appendix 2(o)), which was attached to Mr Eric JOHNSON's letter dated 21 February 2002 to members of the Jury, they were invited to view the entry presentation boards at the Jury meeting venue at the Hong Kong City Hall on Sunday, 24 February 2002. In the morning of 25 February 2002, the Jury first met to consider, among others, the Report of the Technical Panel and the adjudication process. The Jury devoted 26 and 27 February 2002 to the adjudication of the entries and spent the morning of 28 February 2002 finalising its decisions